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FITZPATRICK CELLA HARPER & SCINTO			EXAMINER	
30 ROCKEFELLER PLAZA			ROBINSON, MYLES D	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/580,365	<b>Applicant(s)</b> SUGAWARA, NAOKI
	<b>Examiner</b> Myles D. Robinson	<b>Art Unit</b> 2625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

#### Status

- 1) Responsive to communication(s) filed on 23 May 2006.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 - 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 - 10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 May 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-166a)  
 Paper No(s)/Mail Date See Continuation Sheet
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date: \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :5/23/2006, 4/23/2007, 10/1/2007, 11/5/2007, 10/3/2008.

**DETAILED ACTION**

***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Japan on 12/5/2003. It is noted, however, that applicant has not filed a certified copy of the JP-2003-407977 application as required by 35 U.S.C. 119(b).

***Information Disclosure Statement***

2. The examiner has considered the references listed in the Information Disclosure Statement (IDS) submitted on 5/23/2006, 4/23/2007, 10/1/2007, 11/5/2007 and 10/3/2008 (see attached PTO-1449).

***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: reference character 17 (Fig. 2), reference characters 2, 3a, 8, 9, 11, 13, 16 – 19, 23, 24, 31, 32, 34 – 36, A and P (Fig. 3), reference characters 6 – 8, 23 and 24 (Fig. 5) and reference character S709 (Fig. 7B). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) is required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet

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submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

4. The abstract of the disclosure is objected to because of undue length. The abstract in an application filed under 35 U.S.C. §111 may not exceed 150 words in length. Correction is required. See MPEP § 608.01(b).
5. The attempt to incorporate subject matter into this application by reference to Japanese Patent Application H08-163288 is ineffective because the root words "incorporate" and/or "reference" have been omitted (see *Specification [page 1, lines 23 – 24]*). See 37 CFR 1.57(b)(1).
6. The incorporation by reference will not be effective until correction is made to comply with 37 CFR 1.57(b), (c), or (d). If the incorporated material is relied upon to meet any outstanding objection, rejection, or other requirement imposed by the Office, the correction must be made within any time period set by the Office for responding to the objection, rejection, or other requirement for the incorporation to be effective. Compliance will not be held in abeyance with respect to responding to the objection, rejection, or other requirement for the incorporation to be effective. In no case may the

correction be made later than the close of prosecution as defined in 37 CFR 1.114(b), or abandonment of the application, whichever occurs earlier.

Any correction inserting material by amendment that was previously incorporated by reference must be accompanied by a statement that the material being inserted is the material incorporated by reference and the amendment contains no new matter. 37 CFR 1.57(f).

#### ***Claim Objections***

7. **Claim 10** is objected to under 37 CFR 1.75 as being a substantial duplicate of **claim 9**. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

8. The following quotation of 37 CFR 1.75(a) is the basis of the objection:

- (a) The specification must conclude with a claim particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention or discovery.

9. **Claims 1 – 10** are objected to under 37 CFR 1.75(a) as failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention or discovery.

**Claim 1** recites the limitation "an instruction for transmitting the original" in line 23 of the claim after the limitation the instruction for "the transmitting of the original" given

by the transmitting instruction means was claimed in line 9 of the claim. The applicant has failed to particularly point out and distinctly claim if the applicant is referring to *the same, instant* "instruction for transmitting" or *a unique and distinctly different* "instruction for transmitting" within the claim. All claims dependent upon this claim suffer the same deficiency and, therefore, are objected to as well.

10. **Claim 1** recites the limitation "received image data" in line 8 of the claim after the limitation "image data" received from the communication means was claimed in line 4 of the claim. The applicant has failed to particularly point out and distinctly claim if the applicant is referring to *the same, instant* "received image data" or *a unique and distinctly different* "received image data" within the claim. All claims dependent upon this claim suffer the same deficiency and, therefore, are objected to as well.

11. **Claim 2** recites the limitation "an instruction for transmitting the original" in line 11 of the claim after the limitation the instruction for "the transmitting of the original" given by the transmitting instruction means was claimed in line 9 of the parent claim 1. The applicant has failed to particularly point out and distinctly claim if the applicant is referring to *the same, instant* "instruction for transmitting" or *a unique and distinctly different* "instruction for transmitting" within the claim. All claims dependent upon this claim suffer the same deficiency and, therefore, are objected to as well.

12. **Claim 7** recites the limitation "an instruction for transmitting the original" in line 3 of the claim after the limitation the instruction for "the transmitting of the original" given by the transmitting instruction means was claimed in line 9 of the parent claim 1. The applicant has failed to particularly point out and distinctly claim if the applicant is referring to ***the same, instant*** "instruction for transmitting" or ***a unique and distinctly different*** "instruction for transmitting" within the claim.
13. **Claim 8** recites the limitation "an original" in line 5 of the claim after the limitation "an original" was claimed in line 3 of the claim. The applicant has failed to particularly point out and distinctly claim if the applicant is referring to ***the same, instant*** "original" or ***a unique and distinctly different*** "original" within the claim.
14. **Claim 9** recites the limitation "an original" in lines 5 and 17 of the claim after the limitation "an original" was claimed in line 3 of the claim. The applicant has failed to particularly point out and distinctly claim if the applicant is referring to ***the same, instant*** "original" or ***a unique and distinctly different*** "original" within the claim.
15. **Claim 9** recites the limitation "received image data" in line 10 of the claim after the limitation "image data" received from the communication means was claimed in line 8 of the claim. The applicant has failed to particularly point out and distinctly claim if the applicant is referring to ***the same, instant*** "received image data" or ***a unique and distinctly different*** "received image data" within the claim.

16. **Claim 10** recites the limitation "an original" in lines 6 and 18 of the claim after the limitation "an original" was claimed in line 4 of the claim. The applicant has failed to particularly point out and distinctly claim if the applicant is referring to *the same, instant* "original" or *a unique and distinctly different* "original" within the claim.

17. **Claim 10** recites the limitation "received image data" in line 11 of the claim after the limitation "image data" received from the communication means was claimed in line 9 of the claim. The applicant has failed to particularly point out and distinctly claim if the applicant is referring to *the same, instant* "received image data" or *a unique and distinctly different* "received image data" within the claim.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 101***

18. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

19. **Claim 9** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 9 is drawn to functional descriptive material NOT claimed as residing on a computer readable medium. See MPEP 2106.01 (Functional Descriptive Material) which states:

"Data structures not claimed as embodied in a computer-readable medium are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer."

"Such claimed data structures do not define any structural or functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structures' functionality to be realized."

Claim 9, while defining a program, does not define a "computer-readable medium" along with a machine capable of causing the functional change and is thus non-statutory for that reason. The examiner suggests amending the claim to embody the program on "computer-readable medium" capable of being executed by a machine (e.g. computer, processor, etc.) in order to make the claim statutory.

"Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and USPTO personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, as nonstatutory functional descriptive material. When a computer program is claimed in a process where the computer is executing the computer program's instructions, USPTO personnel should treat the claim as a process claim. When a computer program is recited in conjunction with a physical structure, such as a computer memory, USPTO personnel should treat the claim as a product claim." - MPEP 2106.01 I.

#### ***Claim Rejections - 35 USC § 103***

20. Upon meeting the 3-prong analysis, the Examiner presumes that **claims 1 – 7** to invoke 35 U.S.C. §112, sixth paragraph. See MPEP 2181 I.
  
21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
22. **Claims 1, 2 and 4 – 10** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Sugita et al.** (U.S. Patent No. 5,570,205) in view of **Kawasaki** (Japanese Patent No. 07-283894).

Referring to **claim 1**, Sugita discloses a facsimile machine, characterized by comprising:

reading means for reading an original (see *Figs. 2 and 6 wherein read sensor R1 reads original sheet 12 [Abstract, column 2, line 61 – column 3, line 9]*),

communication means for transmitting/receiving image data (see *Figs. 6, 7 and 10 wherein control circuit 35 controls the transmitting operation of original image from sheet 12 in step S<sub>14</sub> [Abstract and column 4, lines 20 – 23 and 58 – 60] and the reception operation of information being transmitted in step S'<sub>1</sub> [Abstract and column 5, lines 25 – 35]*),

first accumulating means for accumulating a received image data in a memory (see *Figs. 6 and 10 wherein control circuit 35 controls the reception operation of information being transmitted in step S'<sub>1</sub> [column 5, lines 25 – 35] and wherein control circuit 35 inherently discloses a memory [e.g. register, page buffer, RAM, etc.] to accumulate image data while printing received image data*),

recording means for recording the image data following reading-out the same from the memory (see *Fig. 6, printer 22 [Abstract, column 3, lines 13 – 28 and column 5, lines 15 – 19] and see Fig. 10 wherein control circuit 35 causes printer 22 to print received image being transmitted in step S'<sub>8</sub> [Abstract and column 5, lines 44 – 47]*),

transmitting instruction means for instructing the transmitting of the original (see *Figs. 6 – 7 wherein an operator presses original read instruction switch 33 in step S<sub>1</sub> [column 4, lines 32 – 36] to initiate the scanning of original sheet 12 in steps S<sub>3</sub> – S<sub>13</sub> [column 4, lines 36 – 58] and subsequently initiate the transmission operation of the*

*original image in step S<sub>14</sub> [column 4, lines 58 – 60] when selecting one of a transmitting or receiving modes [Abstract]),*

a medium conveying mechanism being a conveying mechanism common for the original and a recording sheet (see *Figs. 2, 6, 7 and 10 wherein driving pulse motor 37 drives driving rollers 13 – 15 to convey original sheet 12 along a common carrier path 11 ] [Abstract, column 2, lines 1 – 3, 42 – 67 and column 5, line 66 – column 6, line 8] for both reading operations [i.e. scanning, copying] in steps S<sub>2</sub> – S<sub>9</sub> [column 4, lines 32 – 48] and recording operations [i.e. printing] in steps S'<sub>2</sub> - S'<sub>11</sub> [column 5, lines 31 – 56]), and*

control means for controlling reading means, communication means, first accumulating means, recording means, and medium conveying mechanism (see *Figs. 6 – 8 and 10, control circuit 35 [column 4, lines 10 – 31 and column 5, lines 19 – 24]*) but does not explicitly disclose the machine further comprising a control means for controlling in such a way that said reading means performs a reading operation of the original to be transmitted based on the instruction of said transmitting instruction means precedently than performance of a recording operation of the received image data by said recording means in case said transmitting instruction means issues an instruction for transmitting the original when said communication means receives the image data and the first accumulating means performs a memory accumulating operation of the received image data.

Kawasaki discloses the facsimile machine (see *Drawing 1, facsimile equipment F*), comprising:

reading means for reading an original (see *Drawing 1, image reading part 5 [paragraph 0012]*),

communication means for transmitting/receiving image data (see *Drawing 1 wherein facsimile communication control 2 communicates via communication line L [paragraph 0012]*),

first accumulating means for accumulating a received image data in a memory (see *Drawing 1, image memory 4, decoding circuits 3a, 3b [Abstract and paragraphs 0012 – 0013]*),

recording means for recording the image data following reading-out the same from the memory (see *Drawing 1 wherein printer control part 6a controls printer 6 [Abstract and paragraph 0012]*),

transmitting instruction means for instructing the transmitting of the original (see *Drawing 1 wherein the user sets the desired original onto the platen and operates a prescribed switch for command [e.g. operation input section 8, a start key displayed by indicator 7] for command of transmission reservation whenever the user desires facsimile transmission [Abstract paragraphs 0012 and 0015]*), and

control means (see *Drawing 1, main control section 1 [Abstract and paragraph 0012]*) for controlling in such a way that said reading means performs a reading operation of the original to be transmitted based on the instruction of said transmitting instruction means precedently than performance of a recording operation of the received image data by said recording means in case said transmitting instruction means issues an instruction for transmitting the original when said communication

means receives the image data and the first accumulating means performs a memory accumulating operation of the received image data (see *Drawing 1 wherein the printing operation of a received fax job from an external facsimile equipment [not shown] is temporarily interrupted during the reception operation of the received job transmitted to facsimile equipment F whenever the user desires to initiate a fax job for reading and transmission at the same facsimile equipment F, and whenever the reading and transmission of user-initiated fax job from facsimile equipment F has concluded, facsimile equipment F subsequently resumes printing of the interrupted received fax job from an external facsimile equipment [Abstract and paragraphs 0014 – 0019]*).

Sugita and Kawasaki are combinable because they are from the same field of endeavor, being facsimile systems. One of ordinary skill in the art would have recognized that applying the known facsimile technique taught by Kawasaki to the base facsimile device taught by Sugita would have yielded predictable results and resulted in an improved facsimile system.

Referring to **claim 2**, Kawasaki discloses the machine further comprising second accumulating means for accumulating the image read by said reading means in the memory,

characterized in that said control means controls in such a way that said second accumulating means performs a memory accumulating operation of the read image precedently than performance of a recording operation of the received image data by said recording means in case said transmitting instruction means issues an instruction for transmitting the original when said communication means receives the image data

and the first accumulating means performs the memory accumulating operation of the received image data (*see Drawing 1 wherein switches S1,S2 toggles between either one of decoding circuits 3a, 3b to freely connect to image reading part 5 for scanning images or facsimile communication control for transmission/reception of fax jobs whenever either one of circuits 3a, 3b is in an idle state [paragraphs 0013 – 0019]*).

Referring to **claims 4 – 6**, Kawasaki discloses the machine further characterized in that said control means controls in such a way that the memory accumulating operation of the received image data by the first accumulating means and the reading operation of the original to be transmitted by said reading means are performed in parallel (*see Drawing 1 wherein decoding circuits 3a, 3b allow for parallel, simultaneous performance [paragraphs 0002, 0005, 0021, 0024 and 0025]*).

Referring to **claim 7**, Kawasaki discloses the machine further characterized in that, when said transmitting instruction means issues an instruction for transmitting the original while a plurality of pages are being recorded, the recording is temporarily interrupted in the midst of the page(s) subjected to recording by said recording means, and after the completion of the reading of the original to be transmitted by said reading means instructed by said transmitting instruction means and the accumulation thereof into said memory by said second accumulating means, the remaining image data is recorded (*see Drawing 1 wherein the printing operation of a received fax job from an external facsimile equipment [not shown] is temporarily interrupted during the reception operation of the received job transmitted to facsimile equipment F whenever the user desires to initiate a fax job for reading and transmission at the same facsimile*

*equipment F, and whenever the reading and transmission of user-initiated fax job from facsimile equipment F has concluded, facsimile equipment F subsequently resumes printing of the interrupted received fax job from an external facsimile equipment [Abstract and paragraphs 0014 – 0019]).*

Referring to **claim 8**, the rationale provided in the rejection of claim 1 is incorporated herein. In addition, the machine of claim 1 performs the method of claim 8.

Referring to **claims 9 and 10**, the rationale provided above in rejection of claim 8 is incorporated herein. The method of claim 8 is stored as programs of instructions of claims 9 and 10 within memory and executed by one or more processors (see *Sugita* [see Fig. 6, control circuit 35 [column 4, lines 16 - 19]] and see *Kawasaki* [see Drawing 1, main control part 1, ROM 9a, RAM 9b [paragraph 0012]]).

23. **Claim 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Sugita et al.** (U.S. Patent No. 5,570,205) in view of **Kawasaki** (Japanese Patent No. 07-283894) and further in view of **Dixon et al.** (U.S. Patent No. 3,688,032).

Referring to **claim 3**, Sugita and Kawasaki discloses the machine as discussed above in the rejection of claim 1 but does not explicitly disclose the machine further characterized by comprising moving means for moving said reading means to a readable position when said reading means reads the original, and for moving said reading means to a retracted position when the reading operation is to be completed.

Dixon discloses the machine characterized by comprising moving means for moving said reading means to a readable position when said reading means reads the

original, and for moving said reading means to a retracted position when the reading operation is to be completed (see *Figs. 1 – 3 wherein facsimile transmitter 25 having a scanning mechanism 26 movable from left to right across a document 27 for scanning and fax transmission [Abstract, column 1, lines 12 – 19, column 2, line 64 – column 3, line 8, column 3, lines 15 – 31, 44 – 50 and column 3, line 62 – column 4, line 27]*).

Sugita, Kawasaki and Dixon are combinable because they are from the same field of endeavor, being facsimile systems. One of ordinary skill in the art would have recognized that applying the known facsimile technique taught by Dixon to the base facsimile systems taught by Sugita and Kawasaki would have yielded predictable results and resulted in an improved facsimile system.

Furthermore, one of ordinary skill in the art could have substituted the known static reading means taught by Sugita and Kawasaki for movable reading means taught by Dixon, and the results of the substitution would have been predictable.

### ***Conclusion***

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Ishikawa et al.** (U.S. Patent Nos. 5,726,768, 6,262,805, 6,741,366 and 7,187,466) disclose an image communication apparatus that converts image data received via a communication line into bit image data to be reproduced as a visible image using a data converting unit along with a reproducing unit (*Abstract and Figs. 9 and 10A – 10E*).

**Hu et al.** (U.S. Statutory Invention Registration No. H1677) disclose a control module for controlling the operation of a multifunctional peripheral device wherein the module is capable of properly directing facsimile data, which must be either received or transmitted, and prioritizing the desired function to be carried out (see *Abstract and Fig. 1*).

**Foth** (U.S. Patent No. 6,473,498) disclose a method and system for maximizing use of a facsimile machine having a single incoming/outgoing communication line and having a monitor/switching device that enables or disables a variety of communication devices based upon signal traffic detected by the monitor in combination with a set of predetermined user priority parameters (see *Abstract and Fig. 6*).

**Sakakibara** (Japanese Patent No. 11-175293) discloses facsimile system comprising a job recognizing device, which can distinguish a manual transmission job, and a control unit which permits preferential job allocation within image memory for the detected manual transmission job over other jobs, wherein whenever there is a manual transmission job, the job is preferentially transmitted via a communication line so that the duration of reading (scanning) operation of the original can be shortened (see *Abstract*).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Myles D. Robinson whose telephone number is (571)272-5944. The examiner can normally be reached on M-F 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Twyler L. Haskins can be reached on (571) 272-7406. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Myles D. Robinson/  
Examiner, Art Unit 2625  
8/20/09

/Twyler L. Haskins/  
Supervisory Patent Examiner, Art Unit 2625